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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/073,706

02/11/2002

Mihai Adrian Tiberiu Sanduleanu

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06/23/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

CUNNINGHAM, TERRY D

ART UNIT

PAPER NUMBER

2816

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/073,706

Applicant(s)

SANDULEANU, MIHAI ADRIAN  
TIBERIU

Examiner

Terry D. Cunningham

Art Unit

2816

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/25/03.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The specification is objected to as lacking antecedent for the use of Fig. 5 or Fig. 6 for element 10 of Fig. 4, as recited in claims 7 and 8. Appropriate correction is required.

### *Double Patenting*

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-11 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-11 of co-pending Application No. 10/217,825. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Examiner has fully considered Applicant's remarks for the above rejection and has not found them to be persuasive. Applicant has not provided any specific remarks to the rejection, thus such is hereby maintained.

***Claim Rejections - 35 USC § 112***

Claims 1-6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 11, the claim is not understood because such fails to provide a definition for terms "C" and " $g_m$ " in the equation, It is suggested that a phrase such as --where C is a capacitance in the subtracting means and  $g_m$  is the transconductance of the subtracting means--.

Claims 2-6 are rejected as including the indefiniteness discussed above with claim 1.

Claim 11 is rejected for similar reasons as claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 11, insofar as understood, rejected under 35 U.S.C. 102(b) as being anticipated by Ishihara (USPN 6,054,883). Ishihara discloses, in Fig. 2, a circuit comprising: "an input means (15)"; "splitting means (PS1)"; "adding means (AD5)"; "a subtracting means (SU4)"; "a first output (17)"; "a second output (16)" "a first transimpedance converter (AM2 and AM3)" "a second transimpedance converter (EQ7)"; and "a third transimpedance converter (EQ6), all connected and operating similarly as recited by Applicant.

Examiner has fully considered Applicant's remarks for the above rejection and has not found them to be persuasive. Without a definition for "C" and " $g_m$ " of the equation, it is not seen that the claims can be interpreted as discussed by Applicant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9 and 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara (USPN 6,054,883) in view of Liu (USPN 6,496,545). In the above discussed circuit to Ishihara, there is no express disclosure for the details of “phase shifter” 15. Liu discloses, in Fig 5A, an improved phase shifter having increased sideband rejection. This circuit is seen to have “a first transistor (Q3)”, “a second transistor (Q1 or Q2)” and “a capacitor (C1)”. Thus, it would have been obvious for one skilled in the art to used the specific phase shifter in Fig. 5A of Liu for the broad phase shifter 15 of Ishihara for the expected advantage of increased sideband rejection.

Examiner has fully considered Applicant’s remarks for the above rejection and has not found them to be persuasive. The requirements for motivation discussed by Applicant is clearly improper restrictive for establishing motivation. Ishihara discloses a broad “phase shifter” and Liu discloses a specific “phase shifter”. Clearly, one skilled in the art would deem this sufficient suggestion for the combination. Further, the above rejection clearly established why one skilled in the art would be motivated to combine the two references. With sufficient motivation, a prima facie case of obvious has been established.

It appears that claims 1-6 and 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Conclusion***

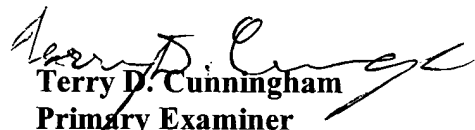
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terry Cunningham whose telephone number is 703-308-4872.

The examiner can normally be reached on Monday-Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy P. Callahan can be reached on 703-308-4876. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0956.

TC  
June 16, 2004

  
Terry D. Cunningham  
Primary Examiner  
Art Unit 2816